IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

WP(C).No. 23850 of 2007(L)

AGAINST THE ORDER DATED 21/03/2006 IN E.P.318/2004 IN OS.411/2002 of PRINCIPAL SUB COURT,KOLLAM

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PETITIONER:

ABDUL RASHEED ABDUL RAHIM,
S/O.ABDUL RASHEED, AGED 42 YEARS,
ANAZHIKATHU VEEDU, ERAVIPURAM VILLAGE, KOLLAM.
NOW RESIDING AT TADAVILA PADINJATTATHIL,
KARIKODU, KOLLAM.

BY ADV. SRI.R.SATISH KUMAR

RESPONDENT:

SARASAMMA VASANTHAKUMARI,
VINAYAKAM VEEDU, IDAVATTATHUCHERRY,
POTTIYAMBHAGOM, PERINADU VILLAGE.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No. 23850 OF 2007 L

Dated this the 6th August, 2007.

JUDGMENT

This writ petition is filed seeking a direction to the Sub Court, Kollam to dispose of Ext.P3 insolvency petition 9/06 within a time fixed by the court and not to proceed with the execution proceedings till the disposal of Ext.P3. The writ petitioner was ordered to be arrested in execution of E.P.318/04 in O.S.411/02. Initially it was challenged before this Court and a learned Judge of this Court, as per order in C.R.P.371/06 confirmed the order of the court below. Now the writ petition is filed to stay the operation of the order of arrest till insolvency petition 9/06 filed by him is disposed of by the Subordinate Judge, Kollam. Under Section 55(4) of the C.P.C where a judgment debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within one month so apply, and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Court may release him from arrest and if he fails so to apply and to appear the Court may either direct the security to be realised or commit him to the civil prison in execution of the decree. Now already an

insolvency petition is filed but some undertaking is necessary on his part to comply with Section 55(4) C.P.C. Therefore, the writ petition is disposed of directing the writ petitioner to move the executing court under Section 55(4) of the C.P.C and the court below is directed not to execute the warrant of arrest against him until it takes a decision on that application. If the said application is not filed within a period of three weeks from today the court shall proceed with the order of arrest which it had already passed.

M.N.KRISHNAN
Judge

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